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No. 80-1735

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

FEDERAL BUREAU OF INVESTIGATION and the UNITED STATES DEPARTMENT OF JUSTICE,
Petitioners,

v.

HOWARD S. ABRAMSON,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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Brief Amici Curiae of The Society of Professional Journalists, Sigma Delta Chi; The American Society of Newspaper Editors; The National Association of Broadcasters; The National Newspaper Association; The Radio-Television News Directors Association; and The Reporters Committee for Freedom of the Press in Support of Respondent.

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INTEREST OF AMICI CURIAE

The Society of Professional Journalists, Sigma Delta Chi, is a voluntary, not-for-profit organization of nearly 28,000 members representing every branch and rank of print and broadcast journalism. It is, in fact, the largest, oldest, and most representative organization of journalists in the United States. Among the Society's purposes are its commitments to ensure that the public's business be conducted in public and to keep governmental records open to public inspec-

tion. Members of the Society regularly prepare news reports based on documents available under the Freedom of Information Act ("FOIA"), including reports about how the federal government works.

The American Society of Newspaper Editors ("ASNE") is a nationwide, professional organization of more than 850 persons who hold positions as directing editors of daily newspapers throughout the United States. The purposes of the Society, which was founded over fifty years ago, include the maintenance of "the dignity and rights of the profession" (ASNE Constitution, Preamble) and "the ongoing responsibility to improve the manner in which the journalism profession carries out its responsibilities in providing an unfettered and effective press in the service of the American people."

The National Association of Broadcasters is a trade association consisting of over 5,200 radio and television stations and all the nationwide commercial broadcast networks. Among its primary concerns is maintaining the vitality of the First Amendment guarantee of freedom of the press.

The National Newspaper Association is a trade association consisting of more than 5,500 weekly and daily newspapers located throughout the United States. A major purpose of the Association is to preserve the constitutional guarantee of freedom of the press for community newspapers.

The Radio-Television News Directors Association ("RTNDA") is a non-profit professional organization of journalists, many of whom have used the FOIA to obtain government records for news purposes. The Association has participated in legislative proceedings

concerning both the federal Act and the state law on the subject of access to government information. RTNDA includes approximately 1,700 members who are active at the network and local levels in the supervision, reporting and editing of news and public affairs programming on radio and television, both broadcast and cable.

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and news editors from the print and broadcast media devoted to the protection of the First Amendment and freedom of information interests of the press. It has provided representation, information, legal guidance or research in virtually every major press freedoms case that has been litigated since 1970.

If the decision of the Court of Appeals is not affirmed the membership of these *amici* will be adversely affected in their ability to report on and criticize the performance of government.

SUMMARY OF ARGUMENT

For the past fifteen years, the public has been able to scrutinize the conduct of American government through the assurances of openness granted by the FOIA.

Exemption 7(C) of the FOIA, 5 U.S.C. § 552(b)(7)(C), exempts from disclosure "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would . . . constitute an unwarranted invasion of personal privacy." Petitioner Federal Bureau of Investigation ("FBI") seeks, in this case, judicial expansion of this exemption to shield from public scrutiny any inform-

ation concerning an identifiable person ever acquired by a federal agency in fulfillment of a law enforcement mission. It seeks judicially what it has unsuccessfully sought legislatively. Couched in terms of technical statutory interpretation, the FBI's argument would, if adopted, have far-reaching implications for the viability of the FOIA. Under the FBI's construction of Exemption 7(C), any federal agency could deny the public access to information gathered for law enforcement purposes by public servants, at public expense, for the public's welfare but long since put to uses unrelated to law enforcement.

The Court of Appeals recognized that such a construction is supported neither by the legislative history of the FOIA nor by the repeated instances of agency noncompliance with the law that led Congress to amend the Act in 1974. The Court of Appeals decision should be affirmed in order to assure the public the news reports about its government necessary for an informed electorate.

ARGUMENT

THE COURT OF APPEALS DECISION PRESERVES THE FREEDOM OF INFORMATION ACT AS A MEANINGFUL VEHICLE THROUGH WHICH THE PRESS AND PUBLIC CAN SECURE ACCESS TO GOVERNMENT INFORMATION.

In this case, the FBI seeks to broaden significantly the number of government documents exempt from disclosure under the FOIA.[1] *Amici* urge this Court to reject this unprecedented construction of the FOIA and preserve the original legislative purpose of the statute—to augment the public's confidence in government by ensuring public accountability.

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[1] 5 U.S.C. § 552 (1976).

Enacted fifteen years ago by a bi-partisan coalition in Congress, the FOIA was designed to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Department of the Air Force* v. *Rose*, 425 U.S. 352, 361 (1976); *see* S. Rep. No. 813, 89th Cong., 1st Sess. 3 (1965). The Act promotes meaningful access to information of public interest by creating a broad presumption that government information is public information. *See NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975). Unless expressly exempted from disclosure by the statute, government records must be made "promptly available to any person." 5 U.S.C. § 552 (a)(3).

Like historians and scholars, journalists were perceived by the FOIA's framers as uniquely well-situated to ensure that the Act fulfills its promise. Under the FOIA, journalists function as the "conduit by which citizens learn about government." *Hearings Before the Subcomm. on Government Information & Individual Rights of the House Comm. on Government Operations*, 97th Cong., 1st Sess. (July 14, 1981) (testimony of Bob Schieffer, CBS News Correspondent, on behalf of the Society of Professional Journalists, Sigma Delta Chi) [hereinafter cited as *1981 FOIA Hearings*]. As Chief Justice Burger noted in *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 573 (1980), journalists serve as "surrogates for the public" in obtaining information about government.

Discharging that duty, the press has used the FOIA methodically since 1966 to gain access to a wide range of government information. As a consequence, news reports have informed citizens about such public issues as the pervasive role of organized crime in the Amer-

ican coal industry,[2] the chronic failure of small businesses to pay federal income taxes,[3] and lax security measures at many nuclear facilities.[4] The press has gathered newsworthy information from all corners of the federal bureaucracy under the FOIA—from the Securities and Exchange Commission[5] and the Internal Revenue Service[6] to the Nuclear Regulatory Commission[7] and the FBI.[8] These representative news reports, and many others, may well not have been published if Exemption 7(C) of the FOIA were given the construction urged by the FBI in this case.

On its face, Exemption 7(C) permits government agencies to withhold "investigatory records compiled for law enforcement purposes" to the extent that dis-

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[2] *See* Ky. Post, May 31-June 19, 1980.

[3] *See* N.Y. Times, July 21, 1975, at 31, col. 6.

[4] *See id.*, Mar. 30, 1975, at 32, col. 2. For a study of 250 major news articles based on information disclosed under the FOIA, *see* Congressional Research Service, *Press Notices on Disclosures Made Pursuant to the Freedom of Information Act, 1972-1980: A Compilation* (Feb. 27, 1981).

[5] *See* Ky. Post, May 31, 1980, at 8K, col. 3.

[6] *See* N.Y. Times, July 21, 1975, at 31, col. 6.

[7] *See id.*, Mar. 30, 1975, at 32, col. 2.

[8] *See id.*, Nov. 24, 1976, at 13, col. 4. The FOIA is used not only by large news organizations with operations in Washington, but also by local news media throughout the nation to report on the impact of governmental decisionmaking. *See, e.g., Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 97th Cong., 1st Sess. (July 15, 1981) (testimony of Ted Capener, Vice-President, News and Public Affairs, Bonneville Broadcasting Corp., on behalf of the Society of Professional Journalists, Sigma Delta Chi) (examples of use of FOIA by journalists in Utah).

closure would "constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). In the instant case, the FBI contends that information originally gathered for law enforcement purposes and exempt from disclosure under Exemption 7(C) is also exempt when the government incorporates the information into other documents compiled for purposes wholly unrelated to law enforcement. *See* Brief of Petitioners at 14-22. Under this construction, any federal agency may effectively withhold information relating to an identifiable person if it was once compiled for law enforcement purposes. *See id.* So construed, Exemption 7(C) engulfs the FOIA, effectively denying the public access to law enforcement information gathered for one purpose and used by the government for an unrelated purpose.[9]

The sweep of the FBI's reading of Exemption 7(C) bestows upon almost every federal agency broad discretion to withhold from FOIA disclosure some of the most telling information about government operations.

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[9] Although the FOIA provides that any "reasonably segregable" portion of a requested record shall be disclosed, 5 U.S.C. §552(b), the FBI's construction of Exemption 7(C) would apply broadly to prevent disclosure of any information originally compiled for law enforcement purposes that relates to an identifiable person, *see* Brief of Petitioners at 14-22. In this context, the safeguard of "segregation" is of little or no value since those portions of requested documents that deal with information of public interest constitute the precise information that falls within the FBI's construction of Exemption 7(C). Indeed, much information made public about the FBI through the FOIA has "revealed improper, possibly unlawful, and certainly embarrassing conduct by the agencies." 1981 FOIA Hearings (July 14, 1981) (testimony of Edward Cony, Vice-President for News, Dow Jones Publishing Co., on behalf of the American Society of Newspaper Editors).

Exemption 7(C)'s requirement that the requested document constitute an "investigatory record compiled for law enforcement purposes" can be met not only by the FBI, *see Irons* v. *Bell*, 596 F.2d 468, 472 (1st Cir. 1979), but also by many other federal agencies that perform both administrative and law enforcement functions, *see, e.g., Forrester* v. *Department of Labor*, 433 F.Supp. 987, 988 (S.D.N.Y. 1977), *aff'd*, 591 F.2d 1330 (2d Cir. 1978).

To claim the exemption, as construed by the FBI, an agency with "mixed" functions, encompassing both administrative and law enforcement responsibilities, must demonstrate only that it was acting within its sphere of enforcement authority in compiling the information requested under the FOIA. *See Irons, supra*, 596 F.2d at 473. Thus, courts have regularly applied Exemption 7 to "mixed" agencies. The Federal Trade Commission,[10] the Commodity Futures Trading Commission,[11] the National Highway and Traffic Safety Administration,[12] the Securities and Exchange Commission,[13] the Department of Labor,[14] the Equal Em-

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[10] *See, e.g.*, Amolsch & Madden, Inc. v. FTC, 591 F.2d 809, 811 (D.C. Cir. 1978); Fedders Corp. v. FTC, 494 F.Supp. 325 (S.D. N.Y. 1980).

[11] *See, e.g.*, Hunt v. Commodity Futures Trading Comm'n., 484 F.Supp. 47, 50 (D.D.C. 1979).

[12] *See, e.g.*, Firestone Tire & Rubber Co. v. Coleman, 432 F.Supp. 1359, 1368-69 (N.D. Ohio 1976).

[13] *See, e.g.*, OKC Corp. v. Williams, 489 F.Supp. 576, 586 (N.D. Tex. 1980).

[14] *See, e.g.*, Forrester v. Department of Labor, 433 F.Supp. 987, 988 (S.D.N.Y. 1977), *aff'd*, 591 F.2d 1330 (2d Cir. 1978); T.V. Tower, Inc. v. Marshall, 444 F.Supp. 1233, 1236 (D.D.C. 1978).

ployment Opportunity Commission,[15] and the Interstate Commerce Commission[16] have all withheld information pursuant to Exemption 7 of the FOIA. Even those courts that have denied claims by "mixed" agencies pursuant to Exemption 7(C) have held the exemption inapplicable only after scrutinizing the purpose for compiling the records in question.[17] Not one of these disclosure orders was based on a finding that the agency did not perform law enforcement functions.

Thus, the FBI's construction of Exemption 7(C) would exacerbate the two greatest obstacles to effective use of the FOIA by the press and public: expense and delay. Although the 1974 Amendments to the FOIA theoretically require agencies to respond to a request within ten working days, *see* 5 U.S.C. § 552(a)(6)(A), requesters must routinely incur the considerable expense and delay inherent in the Act's administrative and judicial review provisions, *see id.* § 552(a)(6)(A)-(C).[18] Agencies have become expert at the art of

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[15] *See, e.g.*, Charlotte-Mecklenburg Hosp. Auth. v. Perry, 571 F.2d 195, 201-03 (4th Cir. 1978).

[16] *See, e.g.*, Zeller v. United States, 467 F.Supp. 487, 501 (E.D. N.Y. 1979).

[17] *See, e.g.*, Gregory v. Federal Deposit Ins. Corp., 470 F.Supp. 1329, 1333-34 (D.D.C. 1979); Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 869 (D.C. Cir. 1980); Founding Church of Scientology v. Miller, 490 F.Supp. 144, 147 (D.D.C. 1980) (Treasury Department); Education/Instruccion, Inc. v. Department of Hous. & Urban Dev., 471 F.Supp. 1074, 1078 (D. Mass. 1979); *cf.* Church of Scientology v. Department of Defense, 611 F.2d 738, 748-49 (9th Cir. 1979) (remanded to determine law enforcement purpose).

[18] Not every dilatory response to an FOIA request signals a government attempt to hide official mistakes and malfeasance. Many

selecting a plausible FOIA exemption that arguably applies to requested information,[19] thereby ensuring that information will not be disclosed until months or even years after the original request.[20] A 1978 FOIA request by the *Miami Herald,* for example, is still pending in the United States Court of Appeals for the Fifth Circuit, even though a federal district court ruled in 1980 that the Small Business Administration erroneously withheld the requested information. *See Miami Herald Publishing Co.* v. *Small Business Administration,* No. 79-1624-CIV-JE (S.D.Fla. July 1, 1980). In an era when little if any news remains timely three years after the fact, the *Herald* has nevertheless

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of the delays have resulted from no more than "the bureaucratic reverence for secrecy . . . as old as ancient civilization when Roman soldiers returning from battle were prohibited from informing the citizens of their occasional defeats." *Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary,* 97th Cong., 1st Sess. (July 15, 1981) (testimony of Steven R. Dornfeld, Knight-Ridder Newspapers, on behalf of the Society of Professional Journalists, Sigma Delta Chi).

[19] The case before the Court aptly illustrates the use and consequences of this tactic. The FBI's initial denial of Respondent's June 1976 request asserted that Exemption 6, 5 U.S.C. § 552(b)(6), authorized the FBI to withhold the requested materials, *see* Brief of Petitioners at 4. Subsequently, the FBI has not advanced this assertion, yet it is the device by which the Bureau forced Respondent to institute litigation.

[20] *See Oversight of the Administration of the Federal Freedom of Information Act: Hearings Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Governmental Affairs,* 96th Cong., 2d Sess. 120 (1980) (testimony of Jack Landau, The Reporters Committee for Freedom of the Press) [hereinafter cited as *1980 FOIA Hearings*]. In the instant case, Respondent first requested the information withheld by the FBI in 1976. *See* Brief of Petitioners at 3.

paid some $45,000 in legal fees. *See 1980 FOIA Hearings* at 119 (testimony of K. Prescott Low, Quincy (Mass.) Patriot-Ledger, on behalf of the American Newspaper Publishers Association). The *Herald's* experience has been shared by many news organizations that seek access to information under the FOIA. *See, e.g., Philadelphia Newspapers, Inc.* v. *Department of Justice,* 405 F.Supp. 8 (E.D. Pa. 1975); *1980 FOIA Hearings* at 54 (testimony of Katherine A. Meyer, Freedom of Information Clearinghouse).

If the FBI's construction is adopted by this Court, government agencies can and no doubt will claim that Exemption 7(C) applies to every document they wish to withhold from public scrutiny. So long as a document contains some information that was once compiled for law enforcement purposes and concerns an identifiable person, Exemption 7(C) would arguably render it immune from disclosure.[21] Even if a judge ultimately holds that the Exemption was erroneously invoked and the information is eventually released, the agency will have succeeded in deferring public scrutiny of its conduct. Deferral of the quest for information often equals deterrence because "news quickly goes stale [and] commentary rapidly becomes irrelevant"

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[21] Although disclosure of law enforcement information about an identifiable person will not always, or even usually, constitute "an unwarranted invasion of personal privacy," 5 U.S.C. § 552(b)(7)(C), discussion of an individual will serve to trigger the Exemption in the first instance, with ultimate judicial resolution of the "privacy" issue deferred for months or even years, *see, e.g.,* Forrester v. Department of Labor, 433 F.Supp. 987, 989 (S.D.N.Y. 1977), *aff'd,* 591 F.2d 1330 (2d Cir. 1978); Lamont v. Department of Justice, 475 F.Supp. 761, 783 (S.D.N.Y. 1979) (court ordered release of "names of [requester's] associates where they are mentioned in a nonderogatory or public context" in FBI files).

to public debate. *Washington Post Co.* v. *Keogh*, 365 F.2d 965, 972 (D.C. Cir. 1966), *cert. denied*, 385 U.S. 1011 (1967); *see Curtis Publishing Co.* v. *Butts*, 388 U.S. 130, 159 (1967) (plurality opinion of Harlan, J.) (recognizing "necessity for rapid dissemination" of matters of public interest). Indeed, the sheer cost of litigating the applicability of Exemption 7(C) will discourage many news organizations from even requesting information under the Act.[22]

As a practical matter, therefore, the FBI's construction of Exemption 7(C) all but exempts that agency, and many others, from the FOIA. Such a construction would accomplish what the FBI has thus far been unable to achieve, despite its diligent efforts, in Congress: amendments to the FOIA creating a blanket exemption for the agency. *See, e.g.*, S.2086, 96th Cong., 1st Sess. (1979); H.R. 5030, 96th Cong., 1st Sess. (1979); H.R. 5129, 96th Cong., 1st Sess. (1979); H.R. 7056, 96th Cong., 2d Sess. (1980).[23] In fact, the most recent legislative proposals favored by the FBI would only exempt FBI documents from disclosure for ten years. *See* S.587, 97th Cong., 1st Sess. § 7 (1981).[24]

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[22] *See* 1980 FOIA Hearings at 119 (testimony of K. Prescott Low); *cf.* New York Times Co. v. Sullivan, 376 U.S. 254, 277-78 (1964) (fear of large damage awards in libel suits inhibits press from publishing).

[23] *See generally, Impact of the Freedom of Information Act and the Privacy Act on Intelligence Activities: Hearings Before the Subcomm. on Legislation of the House Permanent Select Comm. on Intelligence*, 96th Cong., 1st Sess. 65 (1979) (letter from William H. Webster, FBI Director, proposing total exemption for some FBI files and seven-year moratorium on release of all other FBI files).

[24] In the instant case, Respondent requested materials from the FBI dated October 6, 1969. *See* Brief of Petitioners at 4. Even

The Bureau's construction of Exemption 7(C), in contrast, would permit the perpetual exemption of any document that relates to an identifiable person and was once compiled for law enforcement purposes, regardless of other uses to which the information is later put. It is difficult to conceive of information of public interest compiled by the FBI that does not fall within this broad category. In the case of the FBI, Exemption 7(C) would, in effect, become the blanket exemption that Congress has refused to grant to the Bureau.

The wisdom of the current statutory protection for privacy interests and the deleterious impact of the FBI's construction of Exemption 7(C) on news reporting is perhaps most vividly illustrated by "The Coal Connection," a series of news reports that appeared in *The Kentucky Post* in 1980. The seventeen-part series, detailing the role of organized crime in the American coal industry, has received awards for distinguished journalism from both the Society of Professional Journalists, Sigma Delta Chi [25] and Investigative Reporters and Editors, Inc.[26] Nevertheless, it might not have been written had the FBI's construction of Exemption 7(C) been the law.

The series was based on more than 950 documents obtained under the FOIA from several federal agencies. Many of these documents, although they were not "investigatory records compiled for law enforcement pur-

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under the ten-year moratorium provision of S.587, which the FBI favors, these materials would not be exempt from disclosure.

[25] Society of Professional Journalists, Sigma Delta Chi, Award for Distinguished Investigative Reporting (May 15, 1981).

[26] Investigative Reporters and Editors, Inc., Award for Distinguished Investigative Reporting (June 26, 1981).

poses," 5 U.S.C. § 552(b)(7), did contain information originally acquired in the course of law enforcement investigations. The documents initially requested by *The Kentucky Post* reporters centered around Lester Lee, a clerk in an adult bookstore who was murdered in 1978.[27] After Lee's death, *The Kentucky Post* learned that his wallet contained a check for $2,083 issued by a large coal company and forty-three business cards, most of which bore the names of company presidents, stock brokers, real estate agents, investment bankers, and various public officials.[28] The newspaper's reporters used the FOIA to learn more about Lee. Although the FBI refused to disclose numerous documents, often citing Exemption 7(C), *The Kentucky Post* obtained the same information from the Bureau of Prisons and the Department of the Air Force, two agencies that had previously gained access to the FBI materials and incorporated the information into their own documents. The disclosed materials revealed, *inter alia*, that Lee, a convicted rapist whose name was once listed among the FBI's "Most Wanted Fugitives," was involved for several years with organized crime interests before becoming president of an international coal brokerage company.[29] The company, in turn, made questionable contributions to a 1976 presidential campaign.[30]

Government documents about Lee enabled *The Kentucky Post* to detail the involvement of organized crime

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[27] Ky. Post, May 31, 1980, at 1K, col. 1.

[28] *Id.* at 8K, col. 2.

[29] *Id.* at 8K, col. 3.

[30] *Id.* at 8K, col. 3.

in the American coal industry and the resulting impact on that industry, the government, and the American public. For the first time, the public learned how organized crime interests attained a dominant position in world coal markets in the wake of the coal boom of the mid-1970s.[31] And although the newspaper used government documents to piece together an expose of legally questionable business dealings, the government itself did not use the information in its files to investigate Lee's company. No ongoing federal law enforcement pursuit was jeopardized. *See* 5 U.S.C. § 552(b)(7)(A).

The cornerstone of the newspaper's investigation, the government information about Lee, would have been beyond *The Kentucky Post's* reach if Exemption 7(C) said what the FBI now claims that it says. Lee's military, prison, and parole records would have been permanently quarantined to conceal information once gathered pursuant to a law enforcement investigation, but used later for other purposes. In Lee's case, the information was no longer being used by the FBI, yet it supplied critical leads about questionable conduct to a newspaper in a community affected by that conduct.

Ironically, the 1974 Amendments to Exemption 7(C),[32] relied on by the FBI to support its construc-

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[31] *Id.*

[32] In 1974, Congress amended Exemption 7 by substituting the term "records" for "files" and by limiting the bases for withholding "investigatory records" to six specific instances of harm to governmental or individual interests. The aim of these amendments was to reject a broad construction of the Exemption by the District of Columbia Circuit. *See* Center for National Policy Review on Race & Urban Issues v. Weinberger, 502 F.2d 370 (D.C. Cir. 1974); Ditlow v. Brinegar, 494 F.2d 1073 (D.C. Cir.), *cert. denied*, 419

tion of the statute, were written to facilitate precisely the kind of news reporting typified by "The Coal Connection." The House Report specifically notes that the 1974 Amendments should remedy "the relative lack of utilization of the Act by the news media" caused by the delaying tactics of federal agencies claiming broad exemptions from the FOIA. H.R. Rep. No. 1419, 92d Cong., 2d Sess. 8 (1974). Exemption 7 was amended to make certain that *only* specific investigatory "records," and not whole "files," are exempt from disclosure, and *only* when those records are themselves "compiled for law enforcement purposes," 5 U.S.C. § 552(b)(7).

CONCLUSION

As written, Exemption 7(C) serves the laudable purpose of ensuring citizens' right of access to information about their government without jeopardizing the legitimate law enforcement activities undertaken by that government. The need for this careful statutory balance has not diminished since 1966 when, in endorsing passage of the FOIA, the Republican Policy Committee expressed the hope that it would end a "period of selective disclosures, managed news, half-truths and admitted distortions."[23] The FBI now seeks to disturb this balance by rendering the agency the sole judge of

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U.S. 974 (1974); Aspin v. Department of Defense, 491 F.2d 24 (D.C. Cir. 1973); Weisberg v. Department of Justice, 489 F.2d 1175 (D.C. Cir.) *(en banc), cert. denied*, 416 U.S. 993 (1974).

[23] *See* Republican Policy Committee Statement on Freedom of Information Legislation, S.1160 (June 20, 1966), *reprinted in Staff of Senate Comm. on the Judiciary, 93d Cong., 2d Sess., Freedom of Information Act Source Book: Legislative Materials, Cases, Articles* 59 (Comm. Print 1974).

what the public ought to know.[34] As President Johnson recognized when he signed the statute into law, the FOIA squarely rejects that view of representative government:

> This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull the curtains of secrecy around decisions which can be revealed without injury to the public interest. . . . I signed this measure with a deep sense of pride that the United States is an open society in which the people's right to know is cherished and guarded.[35]

Amici respectfully request that the judgment below be affirmed.

Respectfully submitted,

BRUCE W. SANFORD
Counsel of Record

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Counsel for Amici

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[34] *See* Brief of Petitioners at 25 ("Disclosure of the withheld segments of information . . . in the FBI files, would not notably aid respondent's asserted purpose, nor would it serve any other purpose 'vital to the functioning of a democratic society.' ") [citation omitted].

[35] H.R. Rep. No. 1419, 89th Cong., 2d Sess. 1 (1966).

APPENDIX

APPENDIX

U.S. DEPARTMENT OF JUSTICE
OFFICE OF THE SOLICITOR GENERAL
Washington, D.C. 20530

October 8, 1981

Bruce W. Sanford, Esquire
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D. C. 20006

Re: *Federal Bureau of Investigation, et al.* v. *Howard S. Abramson, No. 80-1735*

Dear Mr. Sanford:

In response to your letter of October 5, 1981, I hereby consent, on behalf of the petitioners, to the filing of a brief *amicus curiae* on behalf of the Society of Professional Journalists, Sigma Delta Chi, in this case.

Sincerely,

/s/ REX E. LEE
Rex E. Lee
Solicitor General

SHARON NELSON ABRAMSON
ATTORNEY-AT-LAW
418 D St., S.E., Washington, D.C. 20003, (202) 544-3210

October 12, 1981

Bruce W. Sanford, Esq.
Lee Levine, Esq.
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C.

Re: *Federal Bureau of Investigation and the United States Department of Justice* v. *Howard S. Abramson, No. 80-1735*

Dear Messrs. Sanford and Levine:

As counsel to the Respondent in this case we consent to your filing an amicus brief in this proceeding on behalf of a number of national press orgainizations. We understand that you will file this brief no later than October 16, 1981, in compliance with the extension of time granted to the Respondent.

Sincerely,

/s/ SHARON T. NELSON
Sharon T. Nelson